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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

JOHN F. CORCORAN, CLERK
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UNITED STATES OF AMERICA,)	Civil Action No. 4:05cr00022-1
)	
)	<u>2255- FINAL ORDER ADOPTING</u>
v.)	<u>REPORT AND RECOMMENDATION</u>
)	
LAWRENCE LAMONT HAIRSTON.)	By: Hon. Jackson L. Kiser
)	Senior United States District Judge

Lawrence Lamont Hairston brings this action under 28 U.S.C. § 2255, alleging that counsel provided ineffective assistance by failing to file an appeal upon Hairston's request. Respondent moved to dismiss the case and the court referred the matter to United States Magistrate Judge Michael F. Urbanski for an evidentiary hearing to determine whether petitioner requested that his attorney file an appeal. The Magistrate Judge conducted an evidentiary hearing and subsequently filed a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), finding that Hairston did not meet his burden in proving that he directed his attorney to file an appeal and/or that he acted with due diligence in investigating and discovering that an appeal had not been filed. The Magistrate Judge recommended that respondent's motion to dismiss be granted and that Hairston's § 2255 motion be dismissed. Hairston filed timely objections to the report and recommendation, largely reiterating the arguments made in his pleadings and at the evidentiary hearing. Having reviewed the report and recommendation, the objections thereto, and relevant portions of the record de novo in accordance with § 636(b)(1), the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Hairston's objections are **OVERRULED**, the Magistrate Judge's report and recommendation is **ADOPTED** in its entirety, respondent's motion to dismiss is **GRANTED**, and this action is **DISMISSED** and **STRICKEN** from the active docket of the court.

The Clerk of Court is directed to send copies of this order to both parties.

ENTER: This 4th day of November, 2008.


Senior United States District Judge